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OFFICE OF PETITIONS

In re Application of	:	
Priegnitz, et al.	:	
Application No. 09/768,504	:	ON PETITION
Filed: January 25, 2001	:	
Attorney Docket No. TI-31455	:	

This is a decision on the "PETITION TO REVIVE PATENT APPLICATION UNINTENTIONALLY ABANDONED UNDER 37 CFR 1.137(b)", filed November 15, 2004.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The above-identified application became abandoned for failure to file a proper reply to the final Office action mailed August 12, 2003. No extensions of time under 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on November 13, 2003. A Notice of Abandonment was mailed on May 18, 2004. Applicants filed a petition to revive under 37 CFR 1.137(b) on May 25, 2004, which was treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181, in light of applicants' statement that no petition fee was due because applicants were not at fault. The petition was dismissed in a decision mailed on September 2, 2004.

Petitioner was instructed that a grantable petition under 37 CFR 1.137(b) must include a proper reply in response to the final Office action mailed August 12, 2003. The proposed reply to a final Office action required for consideration of a petition to revive must be either (1) a **Notice of Appeal (and fee required by law)**; (2) an amendment that *prima facie* places the application in condition for allowance; (3) the filing of a continuing application under 37 CFR 1.53(b) or if applicable, 1.53(d); or (4) a request for a continuing examination (RCE) under 37 CFR 1.114.

With the instant petition, petitioner still has not submitted a Notice of Appeal and fee. Rather, petitioner has again submitted the Appeal Brief. However, because petitioner included an authorization to charge any additional fees to his deposit account, the \$340 fee for a Notice of Appeal has been charged to Deposit Account No. 20-0668. In addition, the \$1,370 fee for a petition under 37 CFR 1.137(b), and the \$340 fee for the Appeal Brief, have also been charged to the deposit account.

Accordingly, petitioner has met the requirements to revive the above-identified application. Petitioner has paid the petition fee, submitted the proper reply in the form of a Notice of Appeal (and fee), and made a statement of unintentional delay.

37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The statement contained in the instant petition varies from the language required by 37 CFR 1.137(b)(3). The statement contained in the instant petition is being construed as the statement required by 37 CFR 1.137(b)(3). Petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

Pursuant to 37 CFR 1.136, an extension of time must be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment. Accordingly, since the \$420 extension of time fee submitted on March 5, 2004 was subsequent to the maximum period obtainable for reply (February 12, 2004), this fee has been refunded to petitioner's deposit account. Similarly, the \$430 fee for a two month extension charged to the deposit account on November 15, 2004 has also been refunded.

Lastly, as the \$290 fee for a request for an oral hearing was already charged to petitioner's deposit account on March 5, 2004,

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the \$300 fee charged on November 15, 2004 has been refunded.

The application is being forwarded to Group Art Unit 2838 for consideration of the Appeal Brief filed March 5, 2004 (copy re-supplied with the instant petition).

Telephone inquiries concerning this decision should be directed to the undersigned at (571)272-3207.

Cliff Congo

Cliff Congo
Petitions Attorney
Office of Petitions